

Developmental Disabilities Council
Reading Cover Page

Date: January 25, 2007

Meeting: Public Policy Committee

Reading Number: 07-P2

Issue: DD Ombudsman Legislation

Included in this Reading:

Copy of the latest draft of the DD Ombudsman bill.
There will be an official bill by the time of the
Committee meeting.

Background/Summary:

We have been discussing this issue for several
meetings. The bills (House and Senate companion
bills) are the start of the legislative process.

Action:

Discussion

If there are questions, please contact Donna Patrick at 1-800-634-
4473 or donnap@cted.wa.gov

1 DD Ombudsman

2 Draft 4: December 13, 2006

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7 AN ACT Relating to the office of the ombudsman for persons with developmental
8 disabilities; and adding a new chapter to Title 43 RCW.

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10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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12 NEW SECTION. **Sec. 1.** An office of the ombudsman for persons with developmental
13 disabilities is created within the office of the governor for the purpose of promoting
14 public awareness and understanding of developmental disabilities, identifying system
15 issues and responses for the governor and the legislature to act upon, and monitoring
16 and ensuring compliance with administrative acts, relevant statutes, rules, and policies
17 pertaining to services for persons with developmental disabilities and to ensure that
18 services and supports are of good quality and improve a person's quality of life.

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20 The ombudsman shall be an independent function within state government and shall
21 exercise his or her powers and duties without interference from either public or private
22 agencies or organizations.

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24 NEW SECTION. **Sec. 2.** (1) The governor shall appoint a DD ombudsman from a list of
25 six to ten candidates certified by the Developmental Disabilities Council (DDC) as
26 qualified for the position. Each DDC certified candidate shall be a person of recognized
27 judgment, independence, objectivity, and integrity, and shall be qualified by training or
28 experience, or both, in developmental disability services law, policy, and advocacy
29 within the community system of developmental disabilities services. Prior to certifying
30 qualified candidates, the DDC shall consult with, and may receive recommendations
31 from the appropriate committees of the legislature and developmental disabilities
32 stakeholders, regarding candidates for consideration as the ombudsman.

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34 (2) The person appointed DD ombudsman shall hold office for a term of five years and
35 shall continue to hold office until reappointed or until his or her successor is appointed.
36 The governor may remove the ombudsman only for neglect of duty, misconduct, or
37 inability to perform duties. Any vacancy shall be filled by similar appointment for the
38 remainder of the unexpired term. The Governor shall solicit recommendations from the
39 Developmental Disabilities Council and the DD Ombudsman Advisory Committee
40 established in Section 11 as to whether or not to reappoint the ombudsman to another
41 five year term. If the Governor decides not to reappoint the DD Ombudsman the
42 process set forth in Section 2 will be used to appoint a new ombudsman.

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44 NEW SECTION. **Sec. 3.** The DD ombudsman shall perform the following duties:
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(1) Provide information as appropriate on the rights and responsibilities of individuals with developmental disabilities receiving services, and on the procedures for providing these services;

(2) Impartially investigate, upon his or her own initiative, or upon receipt of a complaint, an administrative act alleged to be contrary to law, rule, or policy, imposed without an adequate statement of reason, develop findings in each case and to the extent the findings favor the complainant with a developmental disability follow through on behalf of the complainant to the resolution of the complaint, or based on irrelevant, immaterial, or erroneous grounds; however, the ombudsman may decline to investigate any complaint as provided by rules adopted under this chapter;

(3) Monitor the procedures as established, implemented, and practiced by the department of social and health services or other public or private agency to carry out their responsibilities in delivering services and supports to persons with developmental disabilities;

(4) Review periodically the procedures for providing services and supports to individuals with developmental disabilities and their families, including programs or individuals under contract to provide services, state licensed facilities, and state institutions serving persons with developmental disabilities;

(5) Submit annually to the appropriate committees of the legislature and to the governor by November 1st a report analyzing the work of the office including recommendations;

(6) Grant the appropriate committees of the legislature access to all relevant records in the possession of the ombudsman unless prohibited by law; and

(7) Adopt rules necessary to implement this chapter.

NEW SECTION. Sec. 4. The DD ombudsman shall treat all matters under investigation, including the identities of service recipients, complainants, and individuals from whom information is acquired, as confidential, except as far as disclosures may be necessary to enable the ombudsman to perform the duties of the office and to support any recommendations resulting from an investigation. Upon receipt of information that by law is confidential or privileged, the DD ombudsman shall maintain the confidentiality of the information and shall not further disclose or disseminate the information, except as provided by applicable state or federal law. Investigative records of the office of the DD ombudsman are confidential and are exempt from public disclosure under chapter 42.56 RCW.

NEW SECTION. Sec. 5. Neither the DD ombudsman nor the ombudsman's staff may be compelled, in any judicial or administrative proceeding, to testify or to produce evidence regarding the exercise of the official duties of the ombudsman or of the ombudsman's staff. All related memoranda, work product, notes, and case files of the DD ombudsman's office are confidential, are not subject to discovery, judicial or

administrative subpoena, or other method of legal compulsion, and are not admissible in evidence in a judicial or administrative proceeding.

NEW SECTION. Sec. 6. (1) Identifying information about complainants or witnesses shall not be subject to any method of legal compulsion, nor shall such information be revealed to the governor except under the following circumstances:

(a) The complainant or witness waives confidentiality;

(b) Under a legislative subpoena when there is a legislative investigation for neglect of duty or misconduct by the DD ombudsman or ombudsman's office when the identifying information is necessary to the investigation of the ombudsman's acts;

(c) Under an investigation or inquiry by the governor as to neglect of duty or misconduct by the DD ombudsman or ombudsman's office when the identifying information is necessary to the investigation of the ombudsman's acts.

(2) For the purposes of this section, "identifying information" includes the complainant's or witness's name, location, telephone number, likeness, social security number or other identification number, or identification of immediate family members.

NEW SECTION. Sec. 7. The privilege described in section 5 of this act does not apply when:

(1) The DD ombudsman or ombudsman's staff member has direct knowledge of an alleged crime, and the testimony, evidence, or discovery sought is relevant to that allegation;

(2) The DD ombudsman or a member of the ombudsman's staff has received a threat of, or becomes aware of a risk of, imminent serious harm to any person, and the testimony, evidence, or discovery sought is relevant to that threat or risk; or

(3) The DD ombudsman has been asked to provide general information regarding the general operation of, or the general processes employed at, the ombudsman's office.

NEW SECTION. Sec. 8. (1) An employee of the office of the ombudsman for persons with developmental disabilities is not liable for good faith performance of responsibilities under this chapter.

(2) No discriminatory, disciplinary, or retaliatory action may be taken against an employee of the department of social and health services, an employee of a contracting agency of the department of social and health services, or a family member or recipient of developmental disability services for any communication made, or information given or disclosed, to aid the office of the ombudsman for persons with developmental disabilities in carrying out its responsibilities, unless the communication or information is made, given, or disclosed maliciously or without good faith. This subsection is not intended to infringe on the rights of the employer to supervise, discipline, or terminate an employee for other reasons.

(3) All communications by an ombudsman, if reasonably related to the requirements of that individual's responsibilities under this chapter and done in good faith, are privileged under RCW 9.58.070 and that privilege shall serve as a defense in any action in libel or slander.

137 NEW SECTION. **Sec. 9.** When the ombudsman or ombudsman's staff member has
138 reasonable cause to believe that any public official, employee, or other person has
139 acted in a manner warranting criminal or disciplinary proceedings, the ombudsman or
140 ombudsman's staff member shall report the matter, or cause a report to be made, to the
141 appropriate authorities.
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143 NEW SECTION. **Sec. 10.** The department of social and health services shall:
144 (1) Allow the ombudsman or the ombudsman's designee to communicate privately with
145 any person with developmental disabilities who is receiving services through the
146 department for the purposes of carrying out its duties under this chapter;
147 (2) Permit the ombudsman or the ombudsman's designee physical access to state
148 institutions serving persons with developmental disabilities, and state-licensed facilities
149 or residences for the purpose of carrying out its duties under this chapter; and
150 (3) Upon the ombudsman's request, grant the ombudsman or the ombudsman's
151 designee the right to access, inspect, and copy all relevant information, records, or
152 documents in the possession or control of the department that the ombudsman
153 considers necessary in an investigation.
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155 NEW SECTION. **Sec. 11.** A DD ombudsman consumer advisory committee of 9 people
156 shall be established including a majority of the composition being individuals with
157 developmental disabilities or family members of individuals with developmental
158 disabilities. Five of the members shall be appointed by the Governor; at least one of
159 the Governor's appointees shall be an immediate family of a person with a
160 developmental disability living in an institution and at least one of the Governor's
161 appointees shall be an immediate family member of a person with a developmental
162 disability in a non institutional setting. Two of the members shall be appointed by the
163 Developmental Disabilities Council (DDC) and two of the members shall be appointed
164 by the Washington Protection and Advocacy System (WPAS). At least one each of the
165 appointees of the Governor, DDC and WPAS shall be individuals with developmental
166 disabilities. The DD Ombudsman shall submit a written progress report in formats
167 accessible to advisory committee members at least two weeks prior to each of four
168 quarterly meetings. The advisory committee will produce an annual written evaluation
169 of the DD Ombudsman program which shall be approved by a majority of the advisory
170 committee and submitted to the Governor no later than August 31st of each year.
171 Three months prior to the end of the DD Ombudsman term the Advisory Council will
172 submit a recommendation to the Governor and Developmental Disabilities Council as to
173 whether or not they believe the DD Ombudsman should be reappointed with a
174 explanation as to why they reached this conclusion. Advisory Committee members
175 shall serve for three year terms with a limit of two consecutive terms. Initial members
176 shall be appointed to term lengths necessary to assure the terms of three members
177 expire each year. Members appointed to a vacancy that came about prior to the
178 expiration of a three year term shall be appointed to complete that term. Members who
179 serve less than 1/2 of their predecessor's term may be appointed to two more terms.
180 Advisory council meetings shall be open and allow time for public comment.
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182 NEW SECTION. Sec 12. The DD Ombudsman shall collaborate with the Long Term
183 Care Ombudsman, the Family and Children Ombudsman, the Washington Protection
184 and Advocacy System, and the Special Education Ombudsman to clarify authority in
185 those situations where their mandates overlap.

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187 The DD Ombudsman may develop recommend changes in the procedures for
188 addressing the needs of persons with developmental disabilities and share them with
189 the developmental disabilities council and the protection and advocacy system.

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191 NEW SECTION. Sec 13. The DD Ombudsman shall give priority for its services to
192 clients of the DSHS, the Division of Developmental Disabilities who are receiving, are
193 eligible for, or have applied for services.

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195 NEW SECTION. **Sec 14** Sections 1 through 13 of this act constitute a new chapter in
196 Title 43 RCW.

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